IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.Rev.Pet.No. 3209 of 2007()

CRA.704/2006 of ADDL. SESSIONS COURT, VADAKARA
CC.226/2002 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

.....

REVN. PETITIONER: APPELLANTS/ACCUSED

---

1. MASHOOD S/O. KUNHAMMED,SULEIKA MANZIL,
PUTHUPANAM, VADAKARA.

2. NAZARS/O. ASSAINAR,
PUTHIYOTTIL HOUSE,CHORODE AMSOM AND DESOM
VADAKARA.

BY ADV. SRI.PULIKKOOL ABUBACKER
SRI.ZUBAIR PULIKKOOL

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
S.H.O. VADAKARA POLICE,STATION (CRIME NO. 89/2002)
THROUGH PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl.R.P. NO. 3209 of 2007

* * * * * * * * * * * * * * * * * * * *

Dated: 6th September 2007

ORDER

Revision Petitioners who are uncle and nephew were accused Nos. 1 and 2 in C.C. 226 of 2002 on the file of the J.F.C.M, Vadakara for offences punishable under Sections 341 and 323 read with Sec. 34 I.P.C.

2. The case of the prosecution can be summarised as follows:-

The defacto complainant Shaji (P.W.1) was sitting in his Mini Lorry hearing Reg. No. KL11 D-414 which was parked near the railway gate at Vadakara. At about 12 noon on 8-2-2002 the two accused persons came there for hiring the lorry for transporting fish. When the de facto complainant refused to take fish in the lorry, the accused assaulted him and inflicted injuries on his body.

3. The prosecution altogether examined 8 witnesses as P.Ws.1 to 8 and got marked five documents as Exts.P1 to 5.

4. After the close of the prosecution evidence the accused were questioned under Sec. 313 (1) (b) Cr.P.C. They denied the incriminating circumstances put to them and maintained their innocence. They did not adduce any defence evidence.

5. The learned Magistrate, after trial, as per judgment dated 29-09-2006 acquitted the revision petitioners of the offence punishable under Section 341 I.P.C. but convicted them under Sec. 323 read with Sec. 34 I.P.C. For the said conviction, each of the revision petitioners was sentenced to undergo simple imprisonment for three months and to pay a fine of Rs. 500/- Out of the fine amount, one half was

directed to be given to P.W.1 by way of compensation. On appeal preferred by the revision petitioners as Crl.A. 704 of 2006 before the Addl. District and Sessions Judge, Vadakara, that court as per judgment dated 23-04-2007 confirmed the conviction recorded against the revision petitioners but altered the sentence to fine of Rs. 1,000/- and on default to pay the fine to suffer simple imprisonment for three months each. The direction by the trial court to pay compensation was maintained. It is the said judgment which is assailed in this revision.

6. Eventhough the learned counsel appearing for the revision petitioners assailed the appellate judgment on various grounds including that the testimony of P.W.2 who was not cross-examined has been relied on by the lower appellate court, I am not inclined to accept the submissions made on behalf of the revision petitioners. Consequent on the failure to avail the opportunity to cross-examine P.W2, P.W2 was not cross-examined by the accused. Even if the testimony of P.W.2 were to be eschewed from consideration, still the evidence before court is sufficient to sustain the conviction. No doubt, as in the case of any other prosecution witness, there are contradictions, omissions, exaggerations etc. in the testimony of P.W.1. But they do not have the tendency of rendering the testimony of P.W.1 unworthy of credence. The conviction concurrently recorded by the courts below, does not suffer from any infirmity and is accordingly confirmed.

7. What now survives for consideration is the question as to whether the sentence imposed on the revision petitioners is legal and proper. The lower appellate court has dislodged the sentence of imprisonment imposed on the revision petitioners by the trial court and

has let them off with a sentence of fine. If at all, the lower appellate court was erred it was on the side of lenience in the sentence. i do not find any good ground to interfere with the sentence passed against them.

In the result, this revision is dismissed confirming the conviction entered and the sentence passed against the revision petitioners by the lower appellate court.

V. RAMKUMAR,
(JUDGE)

ani.